

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Revision of the Commission's Rules)	CC Docket No. 94-102
To Ensure Compatibility with)	
Enhanced E911 Emergency Calling Systems)	
)	
Phase II Compliance Deadlines for Non-)	
Nationwide CMRS Carriers)	

To: Wireless Telecommunications Bureau, Policy Division

SUSSEX CELLULAR, INC.
PETITION FOR EXTENSION OF THE
IMPLEMENTATION SCHEDULE BEGINNING
SEPTEMBER 1, 2003 FOR PHASE II OF ENHANCED 911 SERVICES

Sussex Cellular, Inc. ("Petitioner"), by its attorneys, hereby requests a temporary waiver of Section 20.18(g) of the Commission's rules and an extension of the September 1, 2003 and subsequent deadlines to implement Phase II of Enhanced 911 ("E911") services. In particular, Petitioner seeks a temporary waiver of up to twenty-four months of the requirement that Commercial Mobile Radio Service ("CMRS") carriers who have selected a handset-based Phase II E911 solution, and who have been granted an extension of time under the provisions of the Commission's Order in *Revision of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket 94-102, Order To Stay (rel. July 26, 2002), follow a phased in implementation schedule beginning September 1, 2003. As indicated below, Petitioner's request for additional Phase II relief is specific, focused, and limited in scope. Petitioner has undertaken concrete steps to come as close as possible to full compliance, has

documented its efforts, and has a clear path to full compliance,¹ provided that deployment of CDMA technology as an overlay proves to be financially viable for Petitioner.² As a matter of reference, included herewith as Exhibit I is a copy of Petitioner's E-911 Interim Report filed with the FCC on August 1, 2003.

Petitioner has been assessing the suitability of the E911 Phase II hardware and software products of various vendors. Despite good-faith efforts, it does not appear likely that Petitioner will be ready to meet the Phase II mandate of September 1, 2003. Petitioner asks to be afforded additional time to comply with the Phase II implementation requirements. In support hereof, the following is respectfully shown:

I. Background

Petitioner is a small provider of CMRS, offering cellular services in Sussex County, New Jersey. Petitioner has fewer than 500,000 customers, and thereby continues to meet the definition of a Tier III carrier adopted by the Commission in the *Order To Stay*.

In its Interim Report, filed August 1, 2003, Petitioner explains that it is pursuing a handset-based Phase II E911 solution, consistent with Section 20.18(g) of the Commission's rules. The solution is chosen to be the most practical means to deploy Phase II services in its service area. Petitioner continues to pursue available Phase II location technology offerings to achieve a viable path to compliance with the FCC Phase II performance requirements. These efforts are described below.

¹ Public Notice titled "Wireless Telecommunications Bureau Provides Guidance on Filings by Small and Mid-Sized Carriers Seeking Relief from Wireless E911 Phase II Automatic Location Identification Rules" released October 19, 2001 (footnotes omitted), citing the Commission's *Fourth Memorandum Opinion and Order* in CC Docket No. 94-102, 15 FCC Rcd 17442, 17457 (2000).

² Please see Section I.A. Below.

A. Deployment of Technologies

Petitioner provides wireless services using AMPS technology. Deployment of CDMA as an overlay may become possible if Petitioner's financial ability improves. At present, however, Petitioner finds itself in difficult market conditions. Petitioner serves about 550 square miles of mountainous terrain, approximately one-third of which consists of unoccupied federal, state or local parkland. Yet Petitioner competes directly with CMRS service providers who serve the metropolitan New York City market and Sussex County, NJ. Most of the workforce in Petitioner's service area commutes daily out of Sussex County into the New York City market. The extreme competitiveness of wireless services in the area makes it difficult, at this time, for Petitioner to achieve the cash flow necessary to deploy a multi-million dollar CDMA system. Only a small portion of Petitioner's revenue is derived from its own subscribers, coming instead from fixed-rate roaming agreements. Petitioner lacks any practical means by which to increase its income to pay for digital upgrades. At the same time it lacks the purchasing power to negotiate for lower costs.

The vast majority of cell minutes and 911 calls handled by Petitioner's system are generated by roamers. Only one 911 call has been placed by a subscriber of Petitioner in year 2003. (The call lasted only ten seconds, and likely was placed in error.) Many of the larger wireless carriers whose subscribers roam on Petitioner's system have announced a GSM technology choice, resulting in handsets which will not be compatible with Petitioner's planned CDMA system, and for which no automatic location identification ("ALI")-capable phones are available on the market.

Handset-based Phase II technology: Petitioner has determined that a handset-based technology will be the most practical means to make available Phase II services in its operating areas, particularly if Petitioner implements a CDMA system in its service area. Petitioner continues to receive and evaluate available products that would enable Petitioner to deploy a handset-based technology for Phase II services. A network solution is not considered viable in view of the mountainous terrain in Petitioner's service area and the number of cell sites that would be required to achieve an accurate network-based solution. Triangulation is impossible in much of Petitioner's service area because there are too few cell sites covering the same areas. Petitioner operates only seven cellular base stations, with minimal service overlap. Zoning restrictions severely limit construction of new tower structures to accommodate triangulation. Triangulation would also be impossible along many market area borders unless additional cell sites were to be constructed outside Petitioner's licensed territory. Furthermore, because Petitioner serves no densely populated area, it would be unable to achieve the E911 Phase II accuracy standards by averaging the rural performance with the city performance of a network-based solution. Therefore Petitioner plans to develop a CDMA handset-based E911 Phase II delivery system.

Petitioner plans to make available to its customers ALI-capable Tri-Mode CDMA phones, although customers are not expected to purchase the phones in volume. The phones are expensive and their performance is inferior to that of analog phones inside Petitioner's market. Nevertheless, Petitioner will introduce the phones as part of its plan to implement a handset-based E911 Phase II solution.

PSAPS' requests for Phase II services: Petitioner delivers 911 calls to the New Jersey State Police Barracks at Totowa, New Jersey, situated approximately 30 miles southeast of Petitioner's Cellular Geographic Service Area. Petitioner has not received a Phase II request from a specific Public Safety Answering Point ("PSAP"). In response to a letter received in 2001 from the State of New Jersey Office of Information Technology requesting Phase II implementation, Petitioner notified the Office that Petitioner is a rural cellular carrier licensed to provide service only in Sussex County, NJ, and that it was not yet capable of providing Phase II services. Petitioner has received no further communication from the Office of Information Technology. Petitioner continues to deliver all 911 calls to the New Jersey State Police Barracks at Totowa, New Jersey.

B. The Path to Compliance

In planning for Phase II deployment Petitioner has conducted discussions with several appropriate vendors of hardware and software regarding the latest available product information. Petitioner proposes to provide handset-based Phase II services as soon as it has successfully installed a new CDMA system. Petitioner requests up to a twenty-four-month extension of time to gather the necessary resources and proceed with the transition to digital services.

II. Discussion

Generally, the Commission's rules may be waived when there is good cause shown³ and "when special circumstances warrant deviation from the general rule, and such deviation will

³ 47 C.F.R. § 1.3.

serve the public interest.”⁴ In the context of E911, the Commission has recognized that individual waivers that are “specific, focused and limited in scope, and with a clear path to compliance” may be granted where due to “technology-related issues” or “exceptional circumstances,” a wireless carrier is unable to meet the established deadline.⁵ As explained below, Petitioner’s request satisfies this standard.

First, Petitioner is presenting a waiver request that is specific, focused and limited in scope. The scope of the request is limited to Section 20.18(g) of the Commission’s rules. Petitioner seeks only a temporary waiver permitting Phase II deployment to coincide with a transition to digital technology, considering that a handset-based solution is far more viable than a network-based solution.

Second, Petitioner’s request is structured with a “clear path to compliance.” Rather than request a “broad, generalized waiver”⁶ or an indefinite extension, Petitioner proposes a schedule conducive its circumstance as a rural, analog carrier that intends to employ a handset-based location technology based upon a new CDMA platform.

Third, Petitioner has faced technological issues that have hindered its progress. Specifically, the lack of commercially available analog handsets with Phase II location accuracy capability has delayed Petitioner in its ability to deploy a Phase II solution. When CDMA is deployed by Petitioner as an overlay technology, Petitioner anticipates that ALI-capable handsets will be widely available in Petitioner’s market. In the meantime, Petitioner will initiate the

⁴ Fourth MO&O at 17457; Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing WAIT Radio V. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁵ See id.

⁶ See id.

offering of Tri-Mode ALI-capable handsets. Deployment of a network-based solution is a technologically infeasible option for petitioner because of its small number of cell sites, lack of service area overlap in the mountainous terrain, and lack of metropolitan coverage areas with which to average in order to achieve Phase II accuracy standards.

Grant of the requested waiver is in the public interest. The public policy behind the Commission's E911 rules is to meet important public safety needs as quickly as reasonably possible.⁷ Allowing Petitioner to introduce important public safety services on a deferred schedule would serve this objective. The deployment obstacles faced by Petitioner are not within its control. Given Petitioner's small size, the unique nature of its subscribership and the small volume of home-based 911 calls, relief from the Phase II deployment schedule is warranted. Under these circumstances, the implementation timetable proposed herein should be granted to allow for initiation of Petitioner's Phase II solution within a reasonable period of time.

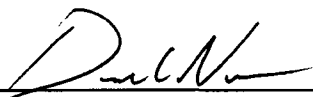
⁷ See Fourth MO&O, 15 FCC Rcd at 17449.

III. Conclusion

For the reasons set forth above, Petitioner requests a temporary waiver of Section 20.18(g) of the Commission's rules. The public interest benefit in this case equals or exceeds that which the Commission has found in other instances to be sufficient for waiver. Accordingly, Petitioner requests that a waiver and temporary extension of up to twenty-four months be granted as proposed.

Respectfully submitted,

SUSSEX CELLULAR, INC.

By: 
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August 1, 2003

Exhibit I

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Marlene H. Dortch, Secretary
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Re: **CC Docket 94-102**
Enhanced 911 Tier III Interim Report
Sussex Cellular, Inc.

Dear Ms. Dortch:

On behalf of the above-referenced carrier there is transmitted herewith a narrative statement regarding the company's E-911 deployment and implementation status. The filer is a Tier III carrier submitting its Interim Report in accordance with the provisions of the Commission's Order in *Revision of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket 94-102, Order To Stay (rel. July 26, 2002) and the subsequent FCC Public Notice released June 30, 2003, DA 03-2113.

If questions arise with regard to this filing, please contact the undersigned.

Very truly yours,



Pamela L. Gist

Enhanced 911 Tier II Interim Report

Sussex Cellular, Inc.

Background

Sussex Cellular, Inc. ("Sussex"), a small independent Tier III carrier with seven employees, currently provides AMPS cellular service in NJ RSA 3A, Sussex County, New Jersey. The NJ RSA 3A encompasses roughly 550 square miles of "mountainous" terrain, approximately 35 percent of which consists of unoccupied national, state or local parkland or wildlife preserve, and includes suburban-to-rural bedroom communities that have relatively low average population densities. The communities served by Sussex are dependent economically on the New York Consolidated MSA. The majority of the Sussex County workforce commutes daily to jobs outside Sussex's CGSA. Sussex competes for the approximately 140,000 residents of Sussex County against well-financed Tier I carriers that market their service in Sussex County and the adjacent New York/New Jersey/Philadelphia Metro Areas. These carriers include Verizon Wireless, AT&T Wireless, Cingular, T-Mobile, Nextel and Sprint PCS.

E-911 Phase II Status

In November 2000, Sussex filed its E911 Report with the Commission. Therein, Sussex described its plans for implementing a Phase II E911 automatic location identification ("ALI") system and advised the Commission of its selection of the handset-based approach. In September 2001, Sussex filed a petition for waiver of Sections 20.18(e) and (g) of the Commissions Rules, and was granted an extension.

Since 1993 when requested by the authorities, Sussex has delivered 911 calls to the New Jersey State Police Barracks at Totowa, New Jersey, situated approximately 30 miles southeast of Sussex's CGSA. Sussex has not received a Phase II request from a specific PSAP. The State of New Jersey Office of Information Technology requested in 2001 that Sussex provide Phase II on a statewide basis. Sussex notified the Office of Information Technology that Sussex was an RSA cellular carrier licensed to provide service only in Sussex County, NJ and could not provide Phase II as requested. Sussex has not received any additional communications from the Office of Information Technology. Sussex continues to deliver all 911 calls to the New Jersey State Police Barracks at Totowa, New Jersey.

Sussex system is an AMPS network. Sussex is not aware of any analog handsets that are ALI capable. Sussex believes that the only resolution is to upgrade its cellular network, which is currently not financially feasible. Sussex anticipates a network migration to CDMA, though a timeline has not been established due to a projected cost of several million dollars, which cannot be supported from cashflow. Sussex is aware of CDMA handsets that are advertised by a manufacturer as ALI capable.

The marketability of CDMA -ALI capable handsets is also a concern. Sussex focuses on marketing reconditioned handsets, which can be offered at a much lower price than new handsets. The extreme competitive nature of the market makes it necessary to distribute cellular phones at a very low retail price. Sussex will however, make new handsets available that are Analog/Digital capable and are advertised by the manufacturer as ALI capable in anticipation of a network upgrade. Sussex does not believe that these handsets will be purchased by consumers due to cost concerns of consumers and the extreme competitive nature of our market.

It is difficult to anticipate the date at which Phase II will be available or if Sussex will be able to meet the December 2005 ultimate implementation date. As previously discussed, Phase II is contingent first upon upgrading the network to CDMA, at a projected cost of several million dollars. Sussex will continue to deliver all 911 calls to the New Jersey State Police Barracks at Totowa, New Jersey, unless otherwise notified.


DECLARATION

I, David A. Lane, hereby state and declare:

1. I am President of Sussex Cellular, Inc.
2. I am familiar with the facts contained in the foregoing petition, and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts that are subject to official notice by the Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 28th day of August, 2003.



David A. Lane

CERTIFICATE OF SERVICE

I, Daniel Ladmirault, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 29th day of August, 2003, sent by U.S. mail, first-class delivery, a copy of the foregoing petition of Sussex Cellular, Inc. to the following:

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